

# MIOSHA

Michigan Occupational Safety and Health Administration (MIOSHA)  
Department of Labor and Economic Opportunity (LEO)

## AGENCY INSTRUCTION

DOCUMENT IDENTIFIER:

MIOSHA-ADM-22-3

DATE:

December 1, 2022

**SUBJECT: Whistleblower Investigations Manual**

- I. Purpose. This instruction establishes policies and procedures for the whistleblower program.
- II. Scope. This instruction applies to the Appeals Division and the General Industry Safety and Health Division (GISHD), Employee Discrimination Section (EDS).
- III. References.
  - A. Michigan Occupational Safety and Health Act, MCL 408.1001 et. seq., [P.A. 154](#) of 1974, as amended.
  - B. Occupational Safety and Health Administration (OSHA) Directive CPL 02-03-011, April 29, 2022, [Whistleblower Investigations Manual \(WIM\)](#).
- IV. Distribution. MIOSHA Staff; Federal OSHA; S-drive Accessible; MIOSHA Messenger; and Internet Accessible.
- V. Cancellations. All previous versions of this agency instruction.
- VI. Next Review Date. To be reviewed in five (5) years from date of issuance.
- VII. History. History of previous versions includes:

GISHD-ADM-16-1R2, January 8, 2021  
GISHD-ADM-16-1R1, April 6, 2016  
GISHD-ADM-16-1, January 21, 2016  
GISHD-MEMO-ADM-11-2, December 9, 2011
- VIII. Contact. [April Strahan](#), Rights Representative Manager, and [Dawn Jack](#), Director, Appeals Division
- IX. Originator: Barton G Pickelman, Director
- X. Significant Changes.
  - A. Changed document from Division Instruction to Agency Instruction.
  - B. Added Appeals Division to scope because WIM has guidance for settlement agreements and other appeal-related procedures.
  - C. Updated references to OSHA WIM to most recent version.
  - D. Added list of exceptions to the adoption of the OSHA WIM.
  - E. Removed Appendices A and B.
- XI. Action. On April 29, 2022, OSHA again revised its [WIM](#), in Directive [CPL 02-03-011](#). The [WIM](#) contains OSHA's procedures for handling retaliation complaints under the various whistleblower statutes for which it has responsibility. With this MIOSHA

Agency Instruction, MIOSHA adopts that OSHA Directive and the most recent version of the OSHA [WIM](#) except as listed below.

- A. For Chapter 3, Section II. Incoming Complaints, 2. How to file, a. Written Complaints, MIOSHA intends to require OSHA-87 form (known as a MIOSHA Discrimination Complaint Form) to be completed, including when the complaint has been submitted in writing.
- B. For Chapter 3, Section V. Referral of Section 11(c) Complainants to the National Labor Relations Board (NLRB), MIOSHA will inform the complainant of their additional right to file a charge with the NLRB, as well as provide contact information for the appropriate NLRB Regional Office. NLRB contact information will be contained on closure letters, including administrative closing letters. MIOSHA will leave contacting of the NLRB to the discretion of the complainant.
- C. For Chapter 3, Section IX. Notification Letters, B. Respondent, MIOSHA will continue its existing practice of requiring information to be submitted to MIOSHA only, due to concerns regarding sensitive, private employment information being released without proper protections.
- D. For Chapter 4, Section III. Case File, E. Investigative Research, MIOSHA will continue its current practice of evaluating the need for research on whether there are prior or current retaliation and/or safety and health cases related to either complainant or respondent on a case-by-case basis to maintain the objectivity of the investigative process.
- E. For Chapter 4, Section IV. Referrals and Notifications, MIOSHA will provide information and contact information for other regulatory agencies to the complainant or witness if the complainant or witness articulates facts that might suggest the possible jurisdiction of another regulatory agency. MIOSHA will leave contacting of the other regulatory agency to the discretion of the complainant or witness.
- F. For Chapter 5, Section VI. Cases under District Court Statutes (Section 11(c), Asbestos Hazard Emergency Response Act (AHERA), and International Safe Container Act (ISCA)), MIOSHA cannot adopt this section of the WIM as it is not consistent with the administrative adjudication process authorized under MIOSHA's statute.
- G. For Chapter 5, Section VI. Cases under District Court Statutes (Section 11(c), AHERA, and ISCA) 2. Requests for Review, MIOSHA cannot adopt this section of the WIM as it is not consistent with the administrative adjudication process authorized under MIOSHA's statute.
- H. For Chapter 6, Section VI. Punitive Damages, MIOSHA cannot adopt this section of the WIM as it is not consistent with the state of the law in Michigan per *Waltonwood at Main v Arroyo*, Oakland County Circuit Court No. 10-1111363-AA.

- I. For Chapter 7, Section III. Alternative Dispute Resolution, MIOSHA cannot adopt this section of the WIM as it is not consistent with the administrative adjudication process authorized under MIOSHA's statute.